

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3
4 UNITED STATES OF AMERICA,) Case No. LA CR 23-00149-FMO
5 Plaintiff,)
6 vs.)
7 DAEKUN CHO,) Los Angeles, California
8 Defendant.) Monday, May 8, 2023
) (1:38 p.m. to 2:06 p.m.)
)

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE MICHAEL R. WILNER
UNITED STATES MAGISTRATE JUDGE

13 Appearances: See next page.
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25 Proceedings recorded by electronic sound recording;
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1 Los Angeles, California, Monday, May 8, 2023 1:38 p.m.

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3 (Call to order.)

4 THE CLERK: Calling case CR 23-149, United States
5 of America versus Daekun Cho.

6 Appearances, please.

7 MS. MACCABE: Good afternoon, your Honor. Jena
8 MacCabe on behalf of the United States.

9 THE COURT: Ms. MacCabe.

10 MR. SOLIS: Good afternoon, your Honor. Anthony
11 Solis on behalf of the Defendant, who's present in custody.

12 THE COURT: All right. Good afternoon to both of
13 you.

14 Appearance from Pretrial please?

15 MS. DEMYERS: Good afternoon, your Honor.
16 Mahogane Demyers with Pretrial Services.

17 THE COURT: Thank you very much.

18 All right. The matter is on for a motion of
19 review of detention. Mr. Cho made his initial appearance in
20 this court -- let's see. My order was -- in March of this
21 year. And at the time, he did not challenge the
22 Government's detention request. The case has subsequently
23 been indicted. And, so, in preparation for today's hearing,
24 I took a look at the original complaint, the indictment,
25 which came after the original and updated reports from

1 Pretrial Services which continue to recommend detention.

2 The Government filed a short but full throated
3 memorandum on Friday that I reviewed over the weekend. I
4 did look at the original application from the Defense which
5 noted the existence of new sureties. I didn't receive a
6 substantive submission. However, this afternoon, in advance
7 of today's hearing, I received what looks like a printout
8 from a Superior Court criminal docket regarding a knowledge
9 of State Vehicle Code, some sort of DUI case from 2012 or
10 2013.

11 So, that's where I am. Mr. Solis, it's your
12 application. I'd be happy to hear from you at the lectern,
13 sir. And before you get going, are you appointed or
14 retained in this matter?

15 MR. SOLIS: I'm retained in this case.

16 THE COURT: That's fine. That's --

17 MR. SOLIS: Okay. A few things, your Honor.

18 THE COURT: Yes.

19 MR. SOLIS: First, the document that I handed to
20 the Court, of which I've provided a copy to the Government
21 and to Pretrial, it's a document I actually just went and
22 obtained myself from the Superior Court because I got the
23 Pretrial Services Report which indicated a warrant that we
24 had not previously been alerted to. And I will just
25 represent to the Court that Mr. Cho indicates that he has

1 never received this charge, this is not him. I will note
2 that the name, Daeun Cho, is different than the
3 Defendant's.

4 I would also note that in the Pretrial Services
5 Report, this particular event is not noted in the criminal
6 history. It's just noted in a separate warrant situation.
7 So, it would be kind of an odd thing to have a warrant for a
8 case that is not included in one's own criminal history.

9 And, finally, I will just make a representation --

10 THE COURT: Just -- because I thought it -- you're
11 on page six of the updated report, which talks about the
12 subject of a -- of a warrant, correct?

13 MR. SOLIS: Yes.

14 THE COURT: Okay. Yeah, I -- I --

15 MR. SOLIS: And that's a \$26,000 warrant. And
16 I'll just note that on the last page of the -- this
17 docket --

18 THE COURT: Okay.

19 MR. SOLIS: -- it indicates that the individual
20 was to -- was to complete a -- an international alcohol
21 program, which I will represent is for people who live
22 abroad, because if you live here, you need to take the AB
23 541 program. This individual had to take an international
24 program in lieu of that. So, I also note the Pretrial
25 Services Report indicates that Mr. Cho has a valid

1 California Driver's License, which he would not get if he
2 did not complete an AB 541 alcohol program.

3 So, based on all that, I do not believe this
4 warrant is -- or the DUI is Mr. Cho, the Defendant seated
5 before the Court.

6 THE COURT: Okay. I mean, I -- I'll just confess
7 to you I didn't quite understand what the warrant was as it
8 was listed here because it didn't really list the complete
9 Vehicle Code section, and the -- it -- that didn't really
10 factor into my understanding of the circumstances here. So,
11 thank you for --

12 MR. SOLIS: Well --

13 THE COURT: Thank you for -- well --

14 MR. SOLIS: -- to be fair to Pretrial, someone who
15 has a -- a case in warrant status for 10 years, that would
16 cause a concern as to his ability to appear, his ability to
17 follow court orders and complete probation. But,
18 nevertheless, this is not him as far as I can tell.

19 THE COURT: Well, I can hear from the Government
20 later if they want to --

21 MR. SOLIS: Sure.

22 THE COURT: -- take that up or not. But I
23 appreciate your clarification and I appreciate your work in
24 drilling down on that.

25 MR. SOLIS: Okay. And as far as the other issues,

1 as far as flight risk, Mr. Cho, according to the report, is
2 a legal permanent resident of the United States. He's been
3 here since 2001. He has no foreign travel. He has no
4 passport. They've seized I think it was an expired passport
5 from him, the agents indicated in the original Pretrial
6 Services Report. So, he has no trial documents.

7 I do note that the Pretrial Services Report
8 indicates that he's a flight risk because he has
9 international ties. He has parents who live in another
10 country. That is not an appropriate consideration for a
11 flight risk. Everybody has someone they might know
12 overseas. I don't -- he hasn't been there. He hasn't lived
13 there in 20 years plus. So, I think that it's unfair to
14 create some presumption that he's a flight risk merely
15 because he's got parents in a foreign country. He has not
16 lived there. He doesn't have a home there. He doesn't have
17 resources to travel. He doesn't have a passport to travel,
18 and he's got relatives here who are willing to pledge half a
19 million dollars in their home to secure his presence here.

20 I also note that the Pretrial Services Report
21 indicates that he's also either a risk or a danger -- I
22 can't remember which one -- because of his marijuana use.

23 During the interview, he admitted to casual
24 marijuana use, never having a dependency or a problem or an
25 issue that required any kind of substance abuse. There's no

1 reason why he couldn't comply with an order from this Court
2 to refrain from marijuana use as many people do that come
3 before Federal Courts, and tell the courts, Well, it's legal
4 in California, and then Federal Courts say, But it's not in
5 the Feds, and you can't do it, and most people are able to
6 comply with that, unless there's some serious substance
7 abuse or dependency issue, which Mr. Cho does not have. So,
8 I don't think that also makes him either a flight risk --
9 well, this one they assess it's a danger, his occasional
10 marijuana use.

11 He does -- he doesn't have minimal criminal
12 history. He's really got no criminal history. There's no
13 history of any conviction whatsoever. And he does have -- I
14 -- I concede the point that he does have serious allegations
15 in the report. I don't take those lightly, but I also don't
16 give them more weight than their due because of the nature
17 of this hearing, number one, and because of the nature of
18 the allegations. These are all allegations that are serious
19 in nature for which he's been never under arrest. He has --
20 has never been apprehended or even arrested and released.

21 In the Government's submission, the Government
22 appropriately concedes some of these matters are still under
23 investigation. So, while they're serious, they're --
24 they're somewhat inchoate. They're a collection of events
25 that the Government alleges happened. None have

1 materialized to the point where the LAPD or anyone arrested
2 him. They've aggregated them in -- in this case. But,
3 really, they say they're still under -- some of them are
4 still under investigation. And the other concern, which I
5 also concede is a concern for the Court, is the gun issue.
6 he was -- they had seized some guns in his home or at the
7 time -- where he was living at the time of his arrest. I do
8 concede that's a concern, but he was also a person with no
9 criminal history who was not prohibited from having guns.

10 He also -- when the agents -- and the Government
11 and Pretrial Services, which is really given to them by the
12 Government I would assume, paint a picture of someone who
13 was armed and resisted arrest in some way and huddled in
14 their apartment.

15 In actuality, they came to execute a warrant, and
16 he didn't know what was going on. He did not, when the
17 police came, arm himself with any of those guns. Those guns
18 were in a closet. They were not accessible to him. He
19 didn't go try to get them and defend himself and resist the
20 police in some armed way.

21 And, so, he doesn't have any of these guns. If he
22 were to live with his aunt and under like a home detention
23 with a half a million dollars bond in -- in their home,
24 certainly the Court could fashion some kind of circumstances
25 that could protect the community if he were to be sent home

1 with his aunt and uncle on home detention with a half a
2 million dollar real property bond and conditions. He could
3 certainly be placed under intensive pretrial supervision.
4 And, while I don't necessarily think all of those are
5 necessary, certainly the Court can fashion some condition or
6 some combination of circumstances which would really offset
7 the danger to the community. I don't think flight risk is
8 really that realistic under these circumstances,
9 particularly because of the -- the strength of the real
10 property bond in this case and his lack of criminal history
11 and the fact that just -- these allegations are just that.

12 So, I could respond to whatever the Government is
13 going to say, but based on that, I think the Government --
14 or the Court, rather, should set a bond in this case, and I
15 spoke to his family. They were going to be here. I don't
16 see them. But they -- both aunt and uncle agreed to be
17 sureties. They're business owners. They're law abiding
18 citizens. They have two homes and -- and a business, and
19 they're citizens I believe. And, so, I think that a bond in
20 this case is appropriate.

21 THE COURT: Mr. Solis, thank you.

22 Ms. MacCabe?

23 MS. MACCABE: Thank you, your Honor. I'd first
24 like to address the warrant issue. I don't have any
25 information to dispute what the Defense is representing, and

1 I'm not basing my argument on that today.

2 To begin, the Government is proffering the
3 indictment, the complaint, and the affidavit. The --

4 THE COURT: I know -- I know what's proffered. I
5 have all that. I already recited it.

6 MS. MACCABE: Understood. Starting with the
7 danger risk in this case, the complaint and the affidavit
8 were sworn out by the agent. The Court found probable cause
9 to issue that. It's based on numerous statements from
10 numerous victims. It's based on video surveillance. It's
11 based on photographs. It's based on so many things that are
12 corroborative of what the agent was saying in the affidavit
13 itself. And the allegations are very serious. Multiple
14 victims have been seriously injured. A victim came forward
15 and spoke about the case that's still under identification
16 but identified the Defendant as being involved in that. And
17 LAPD is looking into it. There's corroboration with that
18 too as well with the fact that the person who was doing that
19 was identified as the Defendant, was also wearing a mask
20 similar to the other case that we have where this Defendant
21 went and assaulted and car jacked another victim wearing the
22 mask, and agents were able to find these skeleton masks that
23 the Government submitted as Exhibit 1 to its opposition in
24 this case. It's shown in the photograph alongside all these
25 firearms, baseball bats, like the baseball bats that were

1 used against one of the victims. There are multiple knives
2 in this photo. The Defendant is a serious danger. And,
3 while he doesn't have any criminal convictions, the Pretrial
4 Services Report itself notes multiple charges, including a
5 charge for assault with a deadly weapon, not a firearm, with
6 great bodily injury likely from 2015 and another charge of
7 carrying a loaded firearm in public.

8 And all of these charges, while they aren't part
9 of his criminal history, it does show his contacts with law
10 enforcement over the years, and --

11 THE COURT: Unless it doesn't.

12 MS. MACCABE: My apologies?

13 THE COURT: Unless it does not. I mean, I've got
14 a pretty consistent record of this Court of not considering
15 issues like arrests that don't lead to a conviction where
16 perhaps a prosecutor like you dismissed the case before
17 going to fruition. I --

18 MS. MACCABE: Perhaps. And I do recognize that
19 some --

20 THE COURT: I actually do have that record, Ms.
21 MacCabe. It's not a perhaps. I have a record. I don't --
22 I don't consider this if it didn't lead to a finding by a
23 court that a person is -- was convicted or pled to that.

24 MS. MACCABE: Understood. Outside of those then,
25 the -- so, based on the allegations that are in the

1 complaint for the charges that this Defendant is charged
2 with in this case, as well as the surrounding circumstances
3 that are all part of this extortion scheme that has been
4 laid out, this Defendant is a danger to the community. The
5 victims are understandably frightened. One of them was
6 noted in the complaint as already having relocated out of
7 state as the Pretrial Services notes today. Other victims
8 have come forward and expressed similar concerns if the
9 Defendant is released now, that they will also be
10 relocating. They are afraid of this Defendant. He has been
11 a danger to this community for years. He's been victimizing
12 the people within his community, and the Government has
13 shown by clear and convincing evidence that the Defendant is
14 a danger should this Court release him and -- in addition to
15 all the reasons I laid out in my paper.

16 Turning to the risk of nonappearance, yes, the
17 Defendant does not currently have a valid passport to leave
18 the country. However, the Pretrial Services Report notes
19 that he is a citizen of South Korea. And while we could say
20 whether or not he wants to leave this country, that's
21 another thing. He does have support outside of the country
22 should he decide that he would like to leave. His parents
23 and his sibling, who he communicates with weekly according
24 to the Pretrial Services Report, live in the country where
25 he has citizenship.

1 Additionally, although he does not have a passport
2 right now, he had multiple invalid passports that agents
3 were able to seize in this case.

4 And, turning back to the complaint itself, notes
5 that the Defendant was engaged in counter surveillance
6 methods when he was trying to extort one of the victims in
7 this case, trying to avoid law enforcement, asking if the
8 police had been called on him, showing great concern for all
9 of that. And when the police did come to arrest him, he, as
10 the Pretrial Services Report notes, tried to escape out of a
11 bathroom window. And he was found with all these firearms,
12 and he would not come out of the house for approximately 5
13 to 10 minutes and was engaged in a standoff for all that
14 time.

15 So, the Government believes for all those reasons,
16 that by a preponderance of the evidence, the Defendant is a
17 risk of nonappearance in this case; and for both risk of
18 nonappearance and danger, the Government submits that he
19 should be detained pending trial.

20 THE COURT: Okay. Thank you, Ms. MacCabe.

21 MS. MACCABE: Thank you.

22 THE COURT: Mr. Solis, do you want the last word?

23 MR. SOLIS: Yes, your Honor. And I appreciate the
24 Court's acknowledgment, and your reputation does precede you
25 for not considering arrests that don't result in a

1 conviction, particularly because the Government can always
2 aggregate things that are mistakes or things for which there
3 wasn't even enough evidence to get past a preliminary
4 hearing. Those are not appropriate considerations, and I
5 think that the allegations, even though they're in a sworn
6 complaint, those are the same types of allegations that are
7 the ones that are dismissed. They haven't been adjudicated.
8 They haven't been resulting in any kind of arrest or
9 anything like that.

10 And I think, while the -- the allegations in the
11 complaint are serious, they are allegations. We're talking
12 about things if the Court listened to the Government
13 carefully, things like a bat, a bat -- like a bat that was
14 found in the Defendant's house. I've got several bats in my
15 house. I don't know that people can -- there was no one
16 that identified any particular bat that he used that was
17 distinctive in some way. The mask might have been
18 distinctive in some way. The point is is that a lot of
19 these allegations are just that, and I think they should be
20 given the appropriate weight in the bail kind of analysis,
21 which is not a great deal of weight in the big scheme of
22 things.

23 The fact that Mr. Cho communicates with his family
24 I think is commendable, not something that makes him a
25 flight risk. I don't think that if he didn't communicate

1 with his family that that would be something that the
2 Government would say, We're glad he doesn't communicate with
3 his family because now he's got nowhere to go.

4 I think on balance, the Court can set some
5 restrictive set of conditions, including home detention with
6 GPS monitoring. He'd be sitting in the same place. He
7 wouldn't be going anywhere. He'd be in the care of his aunt
8 and uncle who are putting their house -- their home on the
9 line. So, I think the Court has sufficient information to
10 set a bond in this case.

11 THE COURT: Can I clarify because I didn't get a
12 submission from you? The property that the family members
13 are offering is something that's being used as an Air BNB,
14 correct?

15 MR. SOLIS: The -- there's two -- there's two of
16 them. They have two real properties. I honestly don't know
17 which one is which. I think they were offering one and then
18 decided to do the other, but I -- I don't know that if the
19 Court wanted to have the one secured with -- I think it's
20 South Wilton, which is where they live, I think they would
21 be willing to do that as well.

22 THE COURT: Well, I -- I understood the discussion
23 with Pretrial to be a property on Fuller.

24 MR. SOLIS: There -- there was two. I don't know
25 that they -- they told me that they were going to do one

1 property. They provided the property profile, and then they
2 said they wanted to do the other property, but I don't think
3 they were exclusive. I think if they were asked to do the
4 one that's their home, they would do that. If they were
5 permitted to do the one that's the other property, they
6 would do that too.

7 They -- I know that one of them is in the uncle's
8 name and maybe one of them is in both of their names.

9 THE COURT: I'm -- it was a little confusing, and
10 -- Pretrial, do you have any insight or am I -- are we both
11 going to read the report and figure it out?

12 MS. DEMYERS: The only information I have is in
13 the report, your Honor.

14 THE COURT: All right. That's fine.

15 MR. SOLIS: But I will just say for the Court's
16 knowledge, the Wilton address is their home, and that's the
17 home where he would be living.

18 THE COURT: Understood. And I'm not trying to be
19 formal here. We can talk about my findings; but, I mean,
20 the question is what's it worth, how much equity? You know,
21 we have that for the other property, not this one.
22 That's --

23 MR. SOLIS: Okay. So --

24 THE COURT: That's all I'm trying to get.

25 MR. SOLIS: So, I have the property profiles, and

1 I believe I sent both of them to Pretrial, though they may
2 have only discussed one of them with the family, but each of
3 the properties had approximately we'll just say between five
4 and seven hundred thousand dollars in equity. So, they're
5 -- they're comparable in value as far as the equity is
6 concerned.

7 THE COURT: Your representation is fine for me.
8 That's fine. Okay. I understood. Okay.

9 MR. SOLIS: I'm going to submit on that.

10 THE COURT: Thank you.

11 All right. All right. Nice job both of you, and
12 thank you very much for your work on this. Before I give my
13 findings, I just want to make two clarifications.

14 First, I went back, and I pulled my original
15 detention order, and I note two things -- I note three
16 things. First of all, the -- the matter was not contested
17 at the original appearance. And, so, the -- we also had a
18 situation where Pretrial didn't have a full amount of
19 information.

20 However, I did not, even on that record, conclude
21 that Mr. Cho was a risk of nonappearance that I couldn't
22 deal with with a combination of conditions. I just -- I
23 didn't -- I didn't detain on that basis. I detained solely
24 on risk of danger to the community.

25 Similarly, at the time of the original detention,

1 there was no information in front of me about this warrant
2 that either I should or shouldn't consider today, but my
3 original decision was not based on that because it wasn't in
4 the report. And, to the extent it's here now, I take the
5 Government's representation that they're not relying on it
6 either.

7 The second point I want to make -- and I
8 appreciate the very kind comment from Mr. Solis, who's an
9 extremely experienced lawyer in our federal community.

10 Yeah, as I said, I don't consider a person's rap
11 sheet. There are a lot of issues that go into -- shoot, I
12 don't consider arrests and police encounters that are part
13 of what is considered a rap sheet because I just don't find
14 it to be persuasive because I don't know enough about those
15 allegations. I don't if it's the person. I don't know if
16 it's just a situation of bad -- wrong place, wrong time. I
17 just don't know enough about it, and it is such an
18 inflammatory set of statements that I just don't -- I find
19 it's fundamentally unfair for me to consider information
20 like that.

21 I don't equate that, though, with information
22 where I do have more information such as the sworn statement
23 of a federal investigator which is presented to me in
24 support of a complaint. Now, I recognize that the complaint
25 is one sided. I recognize that the complaint has not been

1 tested in the adversarial process. I recognize that the
2 complaint has not been tested at trial and has not led to a
3 conviction. However, the information that's contained in a
4 criminal complaint is by statute something that I can
5 consider to the extent it goes to not the likelihood of a
6 conviction or acquittal. That's not part of the test under
7 Section 3142.

8 What I am required -- required to consider is the
9 strength of the evidence to the extent it relates to issues
10 like my ability to set conditions to alleviate risk of
11 nonappearance or danger to the community.

12 So, when I have information that has been
13 presented to me, if it's convincing or if it's in convincing
14 enough detail or if it's corroborated by other information,
15 even though it's not been tested in the way that, you know,
16 it may be later on in this case, I am entitled to consider
17 that. And, so, I just want to politely push back to a
18 statement that perhaps information in the complaint is like
19 information in a -- an unproven part of a rap sheet. I
20 don't necessarily agree with that.

21 Where I am is that the Government, given the
22 nature of the case, bears the burden of demonstrating by
23 clear and convincing evidence, because I -- I'm not going to
24 take up risk of nonappearance. I'm just not. If anything,
25 the Defense's position has gotten stronger by the appearance

1 of some sort of secured bond and a realistic release plan.

2 But on the issue of risk of danger to the
3 community, the Government bears the high burden of
4 demonstrating by clear and convincing evidence that I cannot
5 set conditions that would reasonably assure me that the
6 community would be safe.

7 Based on the original record, I found that the
8 government had met that burden. At the time, there was
9 nothing coming back from -- from the Defense side, which is
10 fine. And, now, where I am is I have a fully interviewed
11 individual and the proffer of what I take to be a legitimate
12 surety in the community. And whether it's the air BNB
13 property or the other property, I'm going to assume for
14 purposes of discussion, that we could -- we could figure out
15 who it is. But where I am is not significantly different
16 from where I was several months ago, which is I have a guy
17 who has, even with no criminal convictions -- and I -- I
18 take that seriously, one minor driving infraction, which
19 appears to be on -- on this -- but a considerable amount of
20 evidence in a lengthy and detailed federal affidavit showing
21 significant threats of violence, acts of violence, and
22 corroborative evidence of violence, including once incident
23 captured on video. The issue about surveillance, counter
24 surveillance, driving and so forth, that's interesting.
25 That's good. I'm not sure where that leads me. Issues

1 about the arrest at the house are problematic. The
2 existence of significant weaponry -- and I'm going to go
3 beyond the -- the pink baseball bat, and just to back up Mr.
4 Solis, I have a baseball bat in my house. It's from when I
5 used to play baseball. I don't have any of the other
6 weaponry that's laid out on the table. That's my choice,
7 but -- and I -- I -- I recognize that there may not have
8 been a statutory prohibition for him possessing these
9 weapons, that there's no felon in possession charge here. I
10 don't know the legitimacy or legality of these weapons, even
11 under current Second Amendment law. I didn't see anything
12 one way or the other in the reports about lawful
13 registration of any of these weapons, but there's a lot of
14 stuff here, and it does tend to corroborate -- and this is
15 material that was obtained as a result of a search warrant
16 -- corroborates aspects of the allegations of serious
17 violence that were contained in -- in the affidavit.

18 And where I'm going is I just don't know what
19 conditions I can set that would reasonably assure me that a
20 guy who knows how to get his hands on these weapons, a guy
21 who has some credible allegations of using them over a
22 prolonged period of time, I -- I don't know that a threat to
23 an aunt or an uncle's equity gets me there, and I don't know
24 how I could plausibly agree to conditions and trust that a
25 digital device gets charged or that a person respects a

1 court order to stay in certain places given legitimate and
2 credible evidence of -- of significant lawless and violent
3 behavior.

4 So, although I am grateful to have the opportunity
5 to reconsider this, because I always want to consider
6 release from custody, and I do think that the request was
7 well based, and the fact that a family member or family
8 members were willing to step up for this guy has -- has real
9 meaning to me, but I don't know that I can set conditions
10 for release that would reasonably assure me that the
11 community would be safe. And, so, on that basis, I am not
12 inclined to modify my original detention request.

13 Anything else from the Government today?

14 MS. MACCABE: Not today, your Honor. Thank you.

15 THE COURT: Mr. Solis?

16 MR. SOLIS: Not on behalf of the Defendant, your
17 Honor.

18 THE COURT: All right. Thank you all very much.

19 MS. MACCABE: Thank you.

20 (Proceedings concluded.)

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I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

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5 /s/Jordan Keilty 10/31/2023
Transcriber Date

FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

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8 /s/L.L. Francisco
L.L. Francisco, President
9 Echo Reporting, Inc.

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